

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

LIBERTY MUTUAL GROUP, INC.,
As subrogee of BODGER SEEDS, LTD.

08 CV 00223 (JSR)

Plaintiff,

- against -

AFFIDAVIT IN SUPPORT

MEDITERRANEAN SHIPPING
COMPANY, S.A.,

Defendant.

-----X

STATE OF NEW YORK)

: SS.

COUNTY OF NASSAU) COURT

FILED IN THE OFFICE OF THE CLERK OF THE COURT

ALFRED J. WILL, being duly sworn, deposes and says:

1. I am a member of the firm BADIAK & WILL, LLP, attorneys for plaintiff herein. Based upon a review of the file maintained by my office, I am familiar with the facts and circumstances of this matter.

2. I make this affidavit in support of plaintiff's motion for summary judgment.

3. Annexed hereto as Exhibit 1 is the Affidavit of Joseph Apolinar who is employed by Environmental Seed Producers ("ESP"), the consignee of the shipment at issue in this matter. Mr. Apolinar's Affidavit will be referred to herein as the "Apolinar Aff."

4. Annexed hereto as Exhibit 2 is the Affirmation, executed August 7, 2008, of Angelina Mbaga, Managing Director of Maua Arusha, Ltd. ("Maua") located in Arusha, Tanzania. Ms. Mbaga's Affirmation will be referred to herein as the "Mbaga Aff."

5. In or about January 2007, Maua exported a shipment of flower seeds to ESP located in Lompac, California with an invoice value of \$63,688.13. ("Shipment"). The importer of record was listed as Bodger Seeds, Ltd. (Mbaga Aff. ¶ 3 and Exhibit 1 annexed thereto).

6. Mediterranean Shipping Company ("MSC") carried the Shipment from Tanzania to Long Beach, California under bill of lading number MSCUTA011430 dated January 26, 2007 with the notation "CLEAN ON BOARD." The bill of lading also indicates two vessels were involved in the shipment: MSC ROYAL ZANZIBAR and MSC ILONA. Annexed hereto as Exhibit 3 is the applicable bill of lading.

7. The Shipment was carried in container number MSCU1550902 with *carrier's* seal number 1760518 and consisted of "648 bags of flower seeds." See Exhibit 3 annexed hereto. Apparently, the container was initially loaded aboard the ROYAL ZANIBAR in Tanzania and later transloaded, at an unknown date, aboard the ILONA. (See Exhibit 4 at page 3).

8. When the container left Maua's possession in Tanzania, the vents of the container were completely open and unobstructed and all seeds were dry. (Mbaga Aff. ¶¶ 5, 6).

9. Maua never instructed MSC to cover the vents of the container containing the Shipment. (Mbaga Aff. ¶ 7).

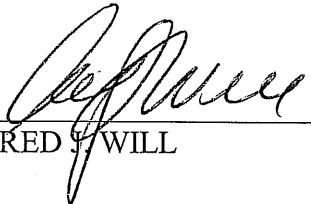
10. When the Shipment arrived at ESP's warehouse in California, the seals of the container were in tact and the vents were completely unobstructed. (Apolinar Aff. ¶¶ 4, 5).

11. As indicated by reports from surveyors for both Plaintiff and MSC, upon receipt by the consignee, water damage to the seeds was noted. Annexed hereto as Exhibit 4 is a report from Vericlaim, Plaintiff's surveyor. Annexed hereto as Exhibit 5 is a report from Captain Arun K. Jolly of Techno Marine Services, MSC's surveyor.

12. During discovery, Plaintiff requested in its document demand log books for both vessels involved in this shipment. Defendant did not produce any log books and, with respect to the vessels, only produced Bay Plans for the MSC ILONA. Annexed hereto as Exhibit 6 is MSC's Response to Plaintiffs' [sic] First Set of Requests for Production dated July 21, 2008.

13. On July 21, 2008, my office sent a written request specifically demanding ventilation records in connection with the shipment of the flower seeds. This request followed-up an earlier request for same. To date, my office has never received the requested ventilation records. Annexed hereto as Exhibit 7 is a true and accurate copy of the July 21, 2008 letter. (Portions of this letter have been redacted as they may, arguably, pertain to settlement discussions).

14. Plaintiff's damages amount to \$61,899.35. This amount represents damage to 636 bags of flower seeds. (See Exhibit 4 [Vericclaim Survey] at pages 6-8.



ALFRED J. WILL

Sworn to before me this
9th day of August 2008



NOTARY PUBLIC

LISA A. SCOGNAMILLO
Notary Public, State of New York
No. 5011463
Qualified in Nassau County
Commission Expires Apr 19, 2011

EXHIBIT 1

UNITES STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LIBERTY MUTUAL GROUP, INC.,
As subrogee of BODGER SEEDS, LTD.,

08 CV 00223 (JSR)

Plaintiff,

AFFIDAVIT

- against -

MEDITERRANEAN SHIPPING
COMPANY, S.A.,

Defendant.

[illegible]

JOSEPH APOLINAR, being duly sworn, deposes and says:

1. I am employed by Environmental Seed Producers ("ESP") and, at all material times, was assigned to the Shipping and Receiving Department.
2. On or about April 4, 2007, container number MSCU1550902 ("Container") was delivered to ESP's warehouse in Lompoc, California.
3. I was personally responsible for unloading the Container which held a shipment of 648 bags of flower seeds transported from Tanzania to Long Beach, California.
4. The Container was delivered to ESP's warehouse with the seals in tact. I personally cut the seals prior to unloading.
5. I personally observed the vents of the Container and observed that all vents were open and completely unobstructed when the Container arrived at ESP's warehouse. There was no cellophane or any other material covering any of the vents.

6. At the time the Container left ESP's warehouse, there was no covering of any kind over any of the vents.



JOSEPH APOLINAR

Sworn to before me this
____th day of July, 2008

See attached
NOTARY PUBLIC

CALIFORNIA JURAT WITH AFFIANT STATEMENT

- ☒ See Attached Document (Notary to cross out lines 1-6 below)
☐ See Statement Below (Lines 1-5 to be completed only by document signer[s], *not* Notary)

1
2
3
4
5
6

Signature of Document Signer No. 1

Signature of Document Signer No. 2 (if any)

State of California

County of Santa Barbara

Subscribed and sworn to (or affirmed) before me on this

24th day of July, 2008, by
Date Month Year

(1) Jose Apdinar
Name of Signer

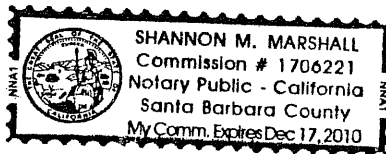
proved to me on the basis of satisfactory evidence
to be the person who appeared before me (.) (,)

(and

(2) _____
Name of Signer

proved to me on the basis of satisfactory evidence
to be the person who appeared before me.)

Signature Shannon M. Marshall
Signature of Notary Public



Place Notary Seal Above

OPTIONAL

*Though the information below is not required by law, it may prove
valuable to persons relying on the document and could prevent
fraudulent removal and reattachment of this form to another document.*

Further Description of Any Attached Document

Title or Type of Document: Affidavit

Document Date: 7/24/08 Number of Pages: 1

Signer(s) Other Than Named Above: _____

RIGHT THUMBPRINT
OF SIGNER #1
Top of thumb here

RIGHT THUMBPRINT
OF SIGNER #2
Top of thumb here

EXHIBIT 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
-----X
LIBERTY MUTUAL GROUP, INC.,
as subrogee of BODGER SEEDS, LTD.,

Plaintiff,

08 CV 00223 (JSR)

- against -

AFFIRMATION

MEDITERRANEAN SHIPPING
COMPANY, S.A.,

Defendant.

-----X
ANGELINA MBAGA declares, under penalty of perjury under the laws of the United States of America pursuant to 28 U.S.C. § 1746 (1), that the following is true and correct.

1. I am employed by Maua Arusha, Ltd. ("Maua") in Arusha, Tanzania.
2. Maua Arusha Ltd. is in the business of exporting flower seeds. I have personally been involved in this business from 1998 to the present.
3. In or about January 2007, Maua Arusha Ltd. exported a shipment of flower seeds to Environmental Seed Producers located in Lompoc, California, with an invoice value of \$63,688.13 ("Shipment"). The importer of record for the Shipment was listed as Bodger Seeds, Ltd. A copy of the invoice pertaining to the Shipment is annexed hereto as Exhibit 1.
4. I have personal knowledge of the Shipment. The Shipment was carried to the United States by Mediterranean Shipping Company, S.A. ("MSC").
5. The seeds in the Shipment were exported dry.
6. Maua Arusha Ltd. did not cover the vents of the container in which the seeds were stored prior to shipment, and the vents were indeed open and unobstructed at the time of shipment.

7. Maua Arusha Ltd. never instructed MSC to cover the vents of the container containing the shipment.

I declare, under penalty of perjury under the laws of the United States of American pursuant to 17 U.S.C. §1746 (1) that the foregoing is true and correct.

Executed on: August 07, 2008


Signature: Angelina Mbaga

Title:

Managing Director

EXHIBIT 1



Maua Arusha Ltd.
P.O. Box 15002
Arusha Tanzania
E-mail: maua_arusha@yahoo.com
Mobile: (00 255) (0) 754 27 35 69
Managing Director:
Msc. Agric Angelina Dimitrova Mbaga



000034

TAX INVOICE

To: Environmental Seeds Producers
1851 W. Olive Ave.
Lompoc
CA 93436
United States of America

Importer of Record: Bodger seeds Ltd.
1800 N. Tyler Ave.
S. El. Monte, CA 91733-3618
United States of America

Clearing and Forwarding:
Expeditors International
Ken Sakawa
5200 W. Century Blvd. 6th Floor
Los Angeles, CA 90045
United States of America

INVOICE NR.48		DATE: 3/01/2007		TIN 101-466-353	
				VRN 11-012237-F	
ITEM NUMBER	ITEM DESCRIPTION	QTY IN KILG.	UNIT PRICE IN USD	TOTAL AMOUNT IN USD	
19023	Tropaeolum Maj. Scarlet Gleam	500.00	3.78	1,890.00	
19135	Zinnia El. Tetra State Fair Mix	121.00	8.00	968.00	
17948	Tagetes Pat. Brocade Mixed	30.00	6.00	180.00	
19028	Zinnia El. Dahliafl. Canary Bird	80.00	8.00	640.00	
17947	Tagetes pat. Nana Petite yellow	49.00	7.00	343.00	
19022	Tropaeolum maj. Golden Gleam	425.00	3.78	1,610.25	
19025	Tropaeolum Nanum Alaska Mix	327.00	3.78	1,236.06	
19015	Tropaeolum Nanum Empress of India	669.00	3.78	2,528.82	
19027	Tropaeolum maj. Cherry Rose	193.50	3.78	731.43	
19131	Zinnia El. Willy Rogers	79.00	8.00	632.00	
19026	Tropaeolum maj. Tall Sgl. Mixed	641.00	3.78	2,422.98	
19024	Tropaeolum Maj. Glorius Gleam Mix	242.00	3.78	914.76	
19014	Tropaeolum nanum Whirlybird Mix	500.00	3.78	1,890.00	
17939	Thunbergia Alata Mix	112.00	20.90	2,340.80	
17950	Tropaeolum Maj. Dwarf Jewell Mixed	12,000.00	3.78	45,360.00	
			VAT 0%		
			TOTAL	63,688.13	
TOTAL AMOUNT DUE: Sixty Three Thousand Six Hundred Eighty Eight and Thirteen Cts. Only					

Terms: Payment within 60 days after date of invoice. Payment to be made in Euro by Swift Transfer.
Maua Arusha Ltd., c/o CRDB Bank, Arusha Branch-Arusha-Tanzania, Acc.nr.19J103406 6300, Swift Code: CORU TZTZ XXX

EXHIBIT 3



MSCU14011430

IS IT PORT-TO-PORT SHIPMENT? (Fill in Boxes 7 & 8) Tick <input checked="" type="checkbox"/>		COMBINED TRANSPORT SHIPMENT? (Fill in Boxes 5, 6, 9 & 10) Tick <input checked="" type="checkbox"/>		N° of original B/L (number & words) 3/THREE		N° of other original B/L (number & words) NIL	
(1) SHIPPER: (Full details) MAUUA ARUSHA LTD P.O. BOX 15002 TEL: (00255) (0) 754 273569 ARUSHA, TANZANIA				(2) CONSIGNEE: (Not Negotiable unless "To Order of ...") ENVIRONMENTAL BREEDS PRODUCERS W. OLIVE AVE LOMPOC CA US 95118 C/O BODGER BREEDS LTD MYLER 91733618 USA 151 93436 1800			
(3) NOTIFY: (No responsibility shall attach to Carrier or to his Agent for failure to notify) EXPEDITION INTERNATIONAL KEN SAGE W. CENTURY BLVD 6TH FLOOR LOS ANGELES CA U.S.A 90045				(4) SPACE FOR CARRIER'S AGENTS ENDORSEMENTS (FOLIO, SLSG) RECEIVED MAR 29 2007			
(5) FREIGHT CARRIED BY: (Combined Transport only) XXXXXXXXXXXXXXXXXXXX		(6) PLACE OF RECEIPT: (Combined Transport only) XXXXXXXXXXXXXXXXXXXX		Z 978 ETA 7/3			
(7) PORT OF LOADING: TANGA		(8) PORT OF DISCHARGE: LONG BEACH					
(9) PLACE OF DELIVERY: (Comb. Trans. only) XXXXXXXXXXXXXXXXXXXX		(10) MODE OF ON-DARRIAGE: (Comb. Trans. only) XXXXXXXXXXXXXXXXXXXX					
(11) VESSEL & VOYAGE ROYAL ZANZIBAR 56R		(12) AGENTS AT PORT OF DISCHARGE / DELIVERY					

(14) CARRIER'S RECEIPT (Continued on attached Bill of Lading Rider page(s) if applicable)				(13) All details shown in Box 13 are furnished by the Shippers, being their Memoranda, Quantity, Condition, Contents and all other information shown in Box 13 are unknown to the Carrier, who has no means to verify their correctness and does not acknowledge them. The statements of the Shippers in Box 13 do not engage the Carrier contractually or in any other manner.	
Identity, Marks of Conts. or other packages and seal numbers	Compass number of conts. or other packages	Total number of conts. or other packages received by the carrier	Haz. Code	Cargo Description (Continued on attached Bill of Lading Rider page(s) if applicable)	Cargo Gross weight
MSCU1350003/301 V/TARE Sent: 17/05/18/Carrier's seal	2200 KG	1		1x20' CONT(S) S.T.C. 648 BAGS OF FLOWERS SEEDS 618 BAGS	15969.000 KG
TOTAL TARE: 2200.00 KG				TOTALS	15969.000 KG

(15) FREIGHT & CHARGES: (PAYABLE) signifies INTENTION. Cargo shall not be delivered unless Freight & Charges are paid!		Specification of Freight & Charges		Basis	Rate	POL	POD	ELSEWHERE
FREIGHT PAYABLE * AT DESTINATION *		Ad Valorem charges		TOTAL FREIGHT & CHARGES				
Declared value:		SIGNED ON BEHALF OF THE MASTER						
In accepting the B/L, the Merchant expressly agrees to be bound by its terms, conditions, limitations and exceptions, whether printed, stamped or written thereon and on Page 1, and in particular agrees that the Carrier shall have the right, at his sole discretion, to		SHIPPED ON BOARD					26 JAN 2007	
shall have the right to carry on deck containers of all kinds including vehicles, tanks, cargo, tools, equipment, machinery and boats or similar articles used to consolidate goods.								
The Carrier shall be responsible in respect of external goods and condition of the containers, packages, units, including the marks and number shown in Box 13, and to ensure the integrity of goods, weights and measurements stated by Shippers in Box 13, which shall								
be the responsibility of the Carrier. The Carrier shall be responsible for the loss of or damage to goods, whether or not the goods are loaded or unloaded by the Carrier, if the goods are not loaded or unloaded by the Carrier.								
In the event of a claim, the no. of Original Bills of Lading shown at the top right corner of this contract have been signed. If this is a negotiable (To Order) B/L, the goods will only be delivered to the holder of the B/L properly endorsed by the Merchant.								
not held by the Merchant (Party), is surrendered, the others to be considered null and void.								
PLACE AND DATE OF ISSUE:								

EXHIBIT 4



Providing claims services to the insurance industry since 1918
A member of VRS universe
adjusters network LLC

700 South Flower Street - Suite 23
Los Angeles, California 900
Tel 213.943.50
Toll Free 800.999.04
Fax 213.943.50

MARINE CARGO SURVEY REPORT NO. LAX07288500/TMS/DWB

Examined For The Account Of Whom It May Concern

At The Request Of

Liberty International Underwriters
55 Water Street, 18th Floor
New York, NY 10041
**Your Reference No.: Bodger Seeds/
LIU #4NMAR-99016**

RE: **Vessel** : "MSC ILONA" V.0701A
Arrival : Long Beach, California; on or about April 4, 2007
Bill of Lading No. : TANG/LONG BEACH; No. MSCUTA011430
Container No. : MSCU1550902
Shipment : 648 Bags of Flower Seeds
Assured : Environmental Seed Producers
Policy No. : APPOMCSE018791006

THIS IS TO CERTIFY THAT:

BACKGROUND:

Survey was requested on April 13, 2007, by Fred Fernandez of Liberty International Underwriters.

At the time of assignment, no dollar amount of loss was provided to us. It was reported that the stated shipment had suffered water damage.

SHIPMENT PARTICULARS:

Shipment: 648 Bags of Flower Seeds, Weighing 15,969.5 Kilos:

Item No.	Item Description	Qty in Kilo	Number Of Bags	Bag Number
19023	Tropaeolum Maj. Scarlet Gleam	500.00	20	1-20
19135	Zinnia El. Tetra State Fair Mix	121.00	5	21-25
17948	Tagetes Pat. Brocade Mix	30.00	3	26-28
19028	Zinnia El. Dahliabl.Canary Bird	80.00	4	29-32
17947	Tagetes Pat. Nana Petite Yellow	49.00	4	33-36
19022	Tropaeolum Maj. Golden Gleam	426.00	17	37-53
19025	Tropaeolum Nanum Alaska Mix	327.00	13	54-66
19015	Tropaeolum Nanum Empress of India	669.00	29	67-95
19027	Tropaeolum Maj. Cherry Rose	193.50	8	96-103
19131	Zinnia El. Willy Rogers	79.00	4	104-107
19026	Tropaeolum Maj. Tall Sgt. Mix	641.00	26	108-133
19024	Tropaeolum Maj. Glorious Gleam Mix	242.00	10	134-43
19014	Tropaeolum Nanum Whirly Bird Mix	500.00	20	144-163
17939	Thunbergia Alata Mix	112.00	5	164-168
17950	Tropaeolum Maj. Dwarf Jewell Mixed	12,000.00	480	169-648

Invoice No: 48 dated January 3, 2007; US\$63,688.13 basis for the entire shipment.

Shipper: Maua Arusha Ltd.
P.O. Box 15002
Arusha, Tanzania

Consignee: Environmental Seed Producers
1851 West Olive Avenue
Lompoc, CA 93436

TRANSIT DETAILS:

The shipment was loaded onboard the M/V "ROYAL ZANZIBAR" V.56R on January 26, 2007, in the Port of Tanga, Tanzania and transported to Long Beach, arriving on April 4, 2007. The shipment had been transloaded onboard the M/V "MSC ILONA" V.0701A; however, we were unable to determine the port or date of the transload.

EXCEPTIONS:

No exceptions were taken at the time of delivery.

SURVEY / INVESTIGATION FINDINGS:

Attendance Date and Location:

- April 17, 2007 at Environmental Seed Producers, 1851 West Olive Avenue, Lompoc, CA 93436

Parties in Attendance:

- Capt. Arun Jolly, Techno Marine Services on behalf of Carrier's interests.
- Ms. Anita Laemoa of Environmental Seed Producers
- Dennis Berri, Senior Surveyor, Vericlaim, Inc., on behalf of Underwriter's interests.

NARRATIVE:

Subsequent to receiving this assignment, contact was made with the Ultimate Consignee and an appointment was arranged to complete a joint survey with the carrier's surveyor on April 17, 2007. Upon arrival at the Consignee's facility, we were escorted to the warehouse, where the shipment was being held, pending our arrival. At that time we found a total of 648 bags containing various types of flower seeds as seen in the attached **Photographs Numbered 1 through 24**. It was noted that the packaging utilized was polystyrene woven plastic bags, which were double sewn closed. No inner lining was utilized within the woven plastic bags. Initial examination of the bags showed signs of rust marks on the exterior of numerous bags, along with water staining. We also noted signs of water condensation within the shrink-wrap, which was holding the bags in place on wood pallets, where they were being stored on.

Initially, we noted a number of different types of style species and seeds to be included in those shipments. The following is a breakdown of the quantity of bags per species:

Item No.	Item Description	Qty in Kilo	Number Of Bags
19023	Tropaeolum Maj. Scarlet Gleam	500.00	20
19135	Zinnia El. Tetra State Fair Mix	121.00	5
17948	Tagetes Pat. Brocade Mix	30.00	3
19028	Zinnia El. Dahliafl. Canary Bird	80.00	4
17947	Tagetes Pat. Nana Petite Yellow	49.00	4
19022	Tropaeolum Maj. Golden Gleam	426.00	17
19025	Tropaeolum Nanum Alaska Mix	327.00	13
19015	Tropaeolum Nanum Empress of India	669.00	29
19027	Tropaeolum Maj. Cherry Rose	193.50	8
19131	Zinnia El. Willy Rogers	79.00	4
19026	Tropaeolum Maj. Tall Sgt. Mix	641.00	26
19024	Tropaeolum Maj. Glorious Gleam Mix	242.00	10
19014	Tropaeolum Nanum Whirly Bird Mix	500.00	20
17939	Thunbergia Alata Mix	112.00	5
17950	Tropaeolum Maj. Dwarf Jewell Mixed	12,000.00	480

It was noted that there was actually only four (4) types of actual species; however, that the different item numbers are different colors and variations of those species. We therefore had the Consignee open up a random sampling of each type of seed in an effort to ascertain the condition of the seeds within the plastic bags. The first item examined was the *Tropaeolum* (*Renuncula*). Illustrations of the seeds, which were found in the sampling of those bags, can be seen in **Photographs Numbered 4 through 15, 17 and 18**. It was noted the seeds had experienced contact with moisture, causing the seeds to shrink and become a dark color, as well as bunching together and becoming moldy to varying degrees.

The second type of seeds examined consisted of the *Zinnia*. Illustrations of the condition of this particular seed and sampling examined can be seen in **Photograph No. 16**. No signs of obvious damage were noted to this particular seeds; however, the Consignee stated that the seeds did feel slightly wet to the touch and may have been affected.

The third type of seed, which was examined from the sampling, was from the *Tropaeolum* species. Illustrations of the condition of this species can be seen in **Photographs Numbered 19 and 20**. No signs of obvious damage were noted to the seed; however, once again the Consignee expressed concern as to the fact that the seeds felt slightly wet to the touch.

The fourth and last type of seed, which was sampled consisted of the *Tagetes*, which was also known as Black Lily. Illustrations of the condition of that seed can be seen in **Photographs Numbered 21 through 24**. Once again, we noted no signs of obvious damage to the seed; however, the Consignee was concerned that the seeds felt moist to the touch.

During our conversations with the Consignee, we inquired as to whether the contents of the bags can be skimmed with the portion of the seeds, which were obviously affected by moisture being removed with the balance of the shipment being utilized for its intended purpose. The Consignee stated the only way that they would be able to evaluate the condition of the seed would be to take a random sampling from good bags and bad bags and send them to a lab and have them tested for germination capabilities. Apparently, the laboratory uses chemicals to plant the seeds and observe the germination process to determine if the seeds were affected. The laboratory would then arrive at a percentage of the seeds, which they would consider to be non-usable, with the balance being acceptable. We therefore advised the Consignee that this should be undertaken in an effort to minimize the loss and to determine the actual extent of the damages.

Subsequent to our surveying the seeds in question, we were taken to the Consignee's office and provided with a CD of the photographs showing the condition of the load at the time of delivery. We noted that there was heavy rust stains and obvious signs of

water contact to numerous bags at the time of devanning. We also noted signs of a white residue supposedly caused due to the contact with moisture on the walls of the container. We inquired as to whether there was any obvious defects to the container at the time of delivery; at which time the Consignee advised us that they noted no signs of obvious defects; however, did comment that the majority of the wet bags were found along the walls of the container and at the rear doors.

During our conversations with Capt. Jolly, the surveyor for the carrier, we were advised that he did complete a survey of the container at the dock prior to it being loaded out onto another vessel. He further stated that the container, at the time of survey was fully loaded with an outbound load therefore, he was unable to visually examine the interior of the container. We were shown the photographs; however, he stated that he would be unable to release the photographs to us without the carrier's permission. We were provided with the name of the Claims Department and we will be contacting them in an effort to obtain copies of these photographs in question. We can state that our examination of the photographs we were being shown, showed no obvious signs of defects to the container.

Subsequent to our original survey, we have been advised by the laboratory that our sampling of the packaging proved negative, indicating that the wetting was caused by fresh water. We attached to this report a copy of the Laboratory Analysis from A.J. Edmond Company regarding the salinity of the sampling examined.

We also attached to this report a copy of the email correspondence between the Consignee and the carrier placing them on notice of claim.

We have also received the results of the laboratory tests of the seeds in question. The Consignee had dried and forwarded a sampling of the seed bags from each species to the lab for testing. The lab results showed that the Russl Minimum Germination Percentage Acceptable for the various seeds were either 60% to 65%, which varied by species. Subsequent to the test being completed, it appears that all but three (3) species type failed to meet the germination minimum qualifications. The balance of the shipment has been rejected by the Consignee.

The claim as presented by the Consignee is as follows:

Item No.	Item Description	Qty. in Kilo	Unit Price In USD	Total Amount In USD
19023	Tropaeleum Maj. Scarlet Gleam	500.00	3.78	1,890.00
17947	Tagetes Pat. Nana Petite Yellow	49.00	7.00	343.00
19022	Tropaeolum Maj. Golden Gleam	426.00	3.78	1,610.28

19025	Tropaeolum Nanum Alaska Mix	327.00	3.78	1,236.06
19015	Tropaeolum Nanum Empress of India	669.00	3.78	2,528.82
19027	Tropaeolum Maj. Cherry Rose	193.50	3.78	731.43
19131	Zinnia El. Willy Rogers	79.00	8.00	632.00
19026	Tropaeolum Maj. Tall Sgt. Mix	641.00	3.78	2,422.98
19024	Tropaeolum Maj. Glorious Gleam Mix	242.00	3.78	914.78
19014	Tropaeolum Nanum Whirly Bird Mix	500.00	3.78	1,890.00
17939	Thunbergia Alata Mix	112.00	20.90	2,340
17950	Tropaeolum Maj. Dwarf Jewell Mixed	12,000.00	3.78	45,360.00

Subsequent to receiving a Sales Authorization for the rejected portion of the shipment, the goods has been placed out for salvage bid. The highest bid being \$1,176.00. The check has been forwarded to the Consignee made payable in that amount and should be taken into consideration should any adjustment be made to this claim.

CAUSE OF DAMAGE:

Based on the documentation, the damages appear to have occurred during transit. Since we were unable to survey the empty container, we were unable to comment as to its condition, other than to state, we noted no obvious damages to it during our review of Capt. Jolly's photographs.

Based on the chloride tests completed by the laboratory, the wetting was due to contact with fresh water.

DISPOSITION:

The rejected portion of the shipment has been placed out for salvage bid and sold for \$1,176.00.

A SUMMARY OF THE LOSS:

The extent of loss can be summarized as follows, subject to the terms and conditions of the policy of insurance:

Bill of Lading No.: MSCUTA011430

Shipment: Flower Seeds

Container No.: MSCU1550902

Invoice Value \$63,688.13
Quantity Sound: 12 Bags

Quantity Damaged: 636 Bags

Type of Damage: Water damage

Disposition: The rejected portion of the shipment salvaged for \$1,176.00.

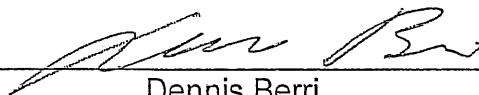
RECOVERY TABLE:

1.	
Name of Carrier:	Mediterranean Shipping Co. (USA), Inc.
Address:	420 Fifth Avenue, 8 th Floor New York, NY 10018
Notified:	Yes, on April 10, 2007, by Consignee.
Response:	Joint survey completed with Steamship Line Surveyor
Delivery Documents:	Requested, but not received
Exceptions:	No exceptions taken

There is a total of 39 Photographs depicting the conditions of the shipment at the time of our survey has been previously submitted with our Preliminary Report.

All of our actions in this matter were without prejudice and subject to the terms and conditions of the policy of insurance.

VeriClaim

A handwritten signature in dark ink, appearing to read "Dennis Berri", is written over a horizontal line.

Dennis Berri
Senior Marine Surveyor

Los Angeles, California
August 9, 2007

DWB:vbl

EXHIBIT 5

Techno Marine Services

Marine Surveyors and Consultants

P.O. Box 1732

San Pedro, CA 90733-1732

● Phone: 714-816-8735 ● Fax: 714-826-4080

SURVEY REPORT NO. 20 – 3338

THIS IS TO CERTIFY that the undersigned did at the request of Messrs. Mediterranean Shipping Company, Marine Claims Department, New York, attend investigation and inspection of the alleged wetting damage to the shipment and condition of the container and advise as follows:

We were advised that the consignee had informed MSC Lines that the shipment of flower seeds was received damaged by water.

MSC REF.:	GVA 2007- 5152 – 561 - 2 / T - 2382
VESSEL:	MSC ROYAL ZANZIBAR Voyage 56A
LOADED AT:	TANGA, TANZANIA
DATE OF LOADING:	JANUARY 26, 2007
ARRIVAL LONG BEACH:	APRIL 5, 2007
BILL OF LADING:	MSCUTA011091 Dated January 26, 2007
CONTAINER:	MSCU1550902
SHIPMENT:	648 BAGS FLOWER SEEDS
SHIPPER:	MAUA ARUSHA LTD. ARUSHA, TANZANIA
CONSIGNEE:	ENVIRONMENTAL SEED PRODUCERS 1851 W. OLIVE AVENUE. LOMPOC, CA 93436
NATURE OF SURVEY:	CONSIGNEE REPORTED WETTING DAMAGE ON THE SHIPMENT RESULTING IN CLUMPING OF SEEDS, MOLD, DISCOLORATION AND DETERIORATION IN QUALITY.
SURVEY DATE:	APRIL 13 & 17, 2007

Techno Marine Services

Marine Surveyors and Consultants

P.O. Box 1732

San Pedro, CA 90733-1732

● Phone: 714-816-8735 ● Fax: 714-826-4080

SURVEY REPORT NO. 20 – 3338

SURVEY LOCATION:

SSA TERINAL
PIER A STREET, LONG BEACH, CA

ENVIRONMENTAL SEEDS PRODUCERS W'HOUSE
1851 WEST OLIVE AVENUE
LOMPOC, CA 93426

SURVEY ATTENDED BY:

TECHNO MARINE SERVICES CAPT. ARUN K. JOLLY

CONSIGNEE'S REPRESENTATIVE MS. ANITA M. LAEMOA

MARINE UNDERWRITER SURVEYOR MR. DENNIS BERRI

SURVEYOR'S NOTES

On April 11, 2007 our office was advised by Mediterranean Shipping Lines, Marine Claims Department, New York, that the consignee had reported wetting damage on the shipment of Flower Seeds.

We immediately contacted the consignee, Environmental Seed Products, Ms. Anita M. Laemoa and were advised that the container was devanned on April 10, 2007 and returned to the terminal.

We then contacted the SSA Terminal and were advised that the container was sent out on the next deployment to load an out bound shipment.

SSA Terminal was requested to advise our office as soon as the loaded container was in gated into the terminal.

We also advised the consignee to contact their Insurance company Liberty Mutual in case they wish to hold a joint inspection.

April 13, 2007 we were advised by SSA Terminal that the container was in the terminal and was scheduled to be loaded onto the MSC Debra V. 713 for discharge port KHH.

Hence we proceeded to the terminal on April 13, 2007 at 1030 hours and inspected the loaded and sealed container. The container was found to be in satisfactory condition.

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SURVEY REPORT NO. 20 - 3338

Upon receiving the request by the marine underwriter surveyor to inspect the container on April 14, 2007 we contacted the terminal and were advised that the container had already been stowed on board the vessel and would not be available for a joint inspection here in Los Angeles.

On April 17, 2007 we proceeded to Environmental Seeds Producers in Lompoc CA and inspected the nature and extent of damage along with Mr. Dennis Berri, surveyor representing the marine underwriters of the shipment.

CONTAINER MSCU1550902

Type: 20 foot enclosed end loading with corrugated metal panels.

Date of Mfg.: 10/2002

Location: On the ground at the Pier A Street Terminal location C 149.

Seal: The container was sealed with seal number PCR LLC 0207050.

Condition: The container was found to be in satisfactory condition as from what could be seen. We were able to inspect the door panels, the front panels and the right side panels.

The door rubber gaskets were in good condition.

Two side vents on the right side panels in the front and door end were seen partially sealed with cellophane tape.

INSPECTION OF THE SHIPMENT ON APRIL 17, 2007 ALONG WITH MR. DENNIS BERRI, SURVEYOR REPRESENTING THE MARINE UNDERWRITERS

At time of our inspection also present was Mr. Joe Apoliner, warehouse receiving personnel and Ms. Anita Laemoa.

According to Mr. Joe Apoliner, the shipment was devanned on April 10, 2007. There was no apparent visible damage to the container.

During devanning the shipment they noticed streaks of condensed beads of water along the side panels of the container, being more pronounced in the after half of the container.

The sides of the bags that were in contact with the condensed water inside the side panels, were wet and had rust stains.

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SURVEY REPORT NO. 20 - 3338

The top of the upper most tier of bags was also seen to be slightly damp to the touch.

We were advised that the bags were stowed to a height of approximately 5 feet and there was a 3 feet void under the roof panels.

The container was returned to the trucker the same day.

During our inspection we noticed some bags had wet stains along either one end or on the side.

The seeds in the wet stained bags were inspected. The stained portion of the bags was cut and the seeds directly adjacent to the wet stains were seen to be wet and discolored and moldy.

We inspected also seeds in bags that did not have any apparent visible wet stains. The seeds in these bags were found to be in satisfactory condition. The seeds were dry and there was no discoloration or shrinkage.

The shipment comprised of the following seed varieties:

Item	Description	Qty Kg	Number Bags
19023	Tropaeolum Maj. Scarlet Gleam	500.00	20
19135	Zinnia El. Tetra State Fair Max	121.00	5
17948	Tagetes Pat. Brocade Mixed	30.00	3
19028	Zinnia El. Dahliafil. Canary Bird	80.00	4
17947	Tagetes Pat. Nana Petite Yellow	49.00	4
19022	Tropaeolum Maj. Golden Gleam	426.00	17
19025	Tropaeolum Nanum Alaska Mix	327.00	13
19015	Tropaeolum Nanum Express of India	669.00	29
19027	Tropaeolum Maj. Cherry Rose	193.50	8
19131	Zinnia El. Willy Rogers	79.00	4
19026	Tropaeolum Maj. Tall Sgl. Mixed	641.00	26
19024	Tropaeolum Maj. Glorius Gleam Mix.	242.00	10
19014	Tropaeolum Nanum Whirlybird Mix	500.00	20
17939	Thunbergia Alata Mix	112.00	5
17950	Tropaeolum Maj. Dwarf Jewell Mix	12,000.00	480
Total		15,969.50 Kg	648 bags

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SURVEY REPORT NO. 20 - 3338

According to the commercial invoice issued by Maua Arusha Ltd., Arusha Tanzania issued to Environmental Seeds Producers, invoice number 48 dated January 3, 2007 the value of the shipment was stated to be USD \$63,688.13.

We inspected the following seeds:

Tropaeolum The seeds adjacent to the wet stains on the bags were mold and clumped together. On account of the moisture in the bags some of the seeds were seen brown discolored and had shrinkage.

The seeds in the bags that did not have any mold stains appeared to be in satisfactory condition.

Zinnia The bags inspected did not have any stains. The seeds were found to be in apparent visible satisfactory condition.

Thunbergia Same as above.

Tagetes Same as above.

SILVER NITRATE TESTS

The wet stained portion of the bags were tested with silver nitrate solution and the tests proved **negative** as to the presence of chlorides.

DISCUSSIONS

During our discussions with the consignee, Ms. Anita Laemoa we were advised that they would be sending samples of the different varieties of the seeds to the laboratory to ascertain the extent of damage to the seeds on account of the same being subjected to moisture.

It was recommended that samples also be sent from the bags that were not directly affected by moisture especially those stowed within the container away from the panels.

CONCLUSION

Based on our inspection and information provided to our office we conclude by stating that the shipment was apparently effected by condensation within the confines of the container resulting from the inherent moisture within the shipment of different varieties of flower seeds.

Techno Marine Services

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SURVEY REPORT NO. 20 - 3338

The seeds in the bags that were directly in contact with the side panels of the container sustained wetting from the condensed beads of water dripping down the side panels and the seeds adjacent to the wet stains on the bags were found to be wet, moldy, clumped together and discolored.

There did not appear to be any damage to the container as seen during our inspection at the SSA Terminal Long Beach after it was in gated into the terminal loaded with an out bound shipment.

The Phytosanitary Certificate is dated January 8, 2007, the invoice is dated January 9, 2007 and the master bill of lading is dated January 26, 2007.

The shipment was received by the consignee on April 10, 2007.

Hence the shipment was in the container for approximately 90 days.

We estimate damage to the seed of *Tropaeolum* in some of the bags that were stowed adjacent to the side panels.

Each bag measured 30"x22"x8". Hence we estimate damage to approximately 128 bags of *Tropaeolum* Seeds (each bag containing 25 kgs) out of the 648 bags that were directly in contact with the side panels amounting to approximately \$11,000.00.

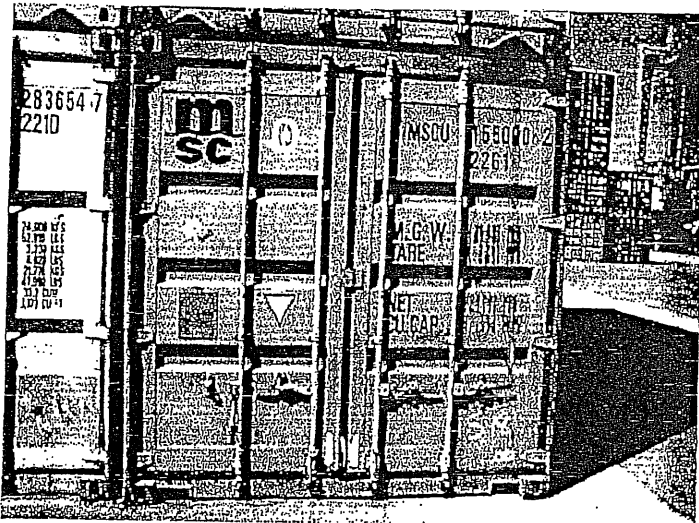
This report is based only on the facts presently known to the surveyor in attendance and is submitted without prejudice to the rights of whom it may concern.

The right to amend or supplement this report should additional information be made available is reserved.

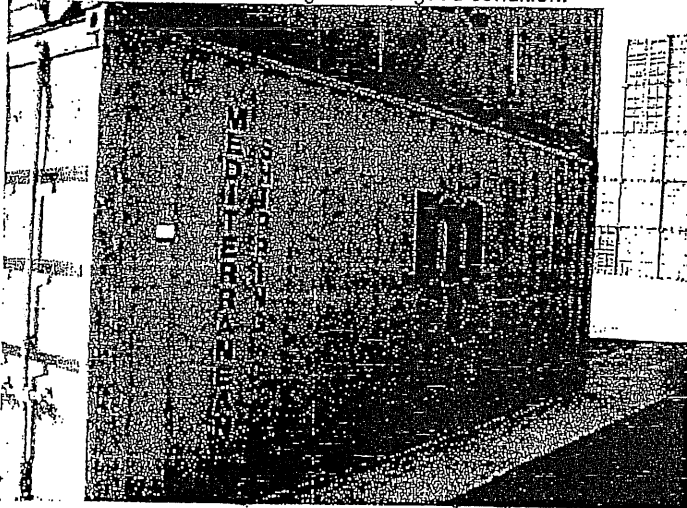
Techno Marine Services

Issued at Los Angeles

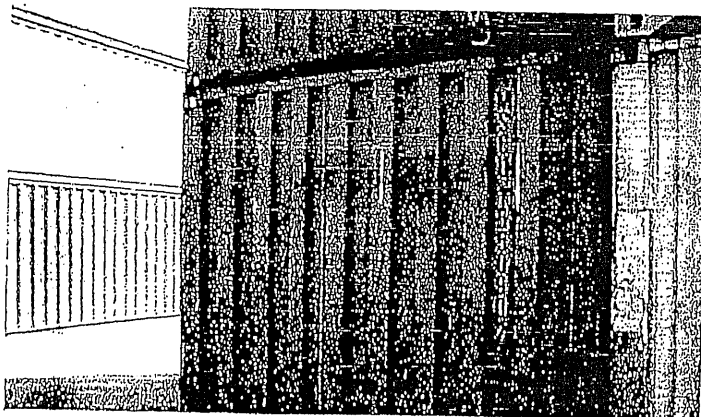
Dated April 20, 2007

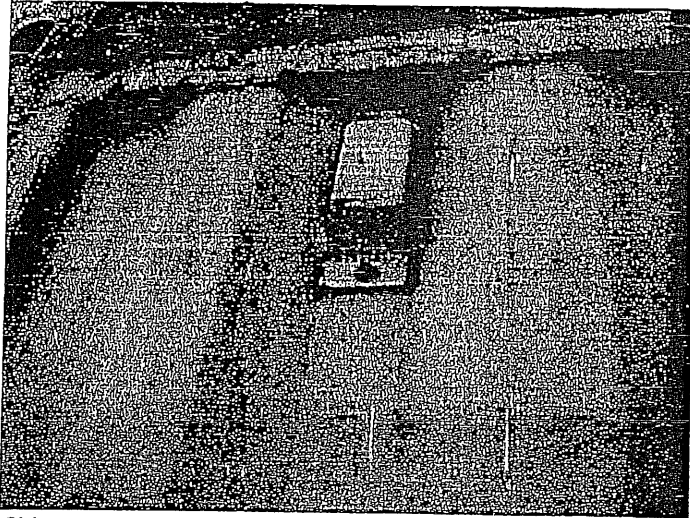
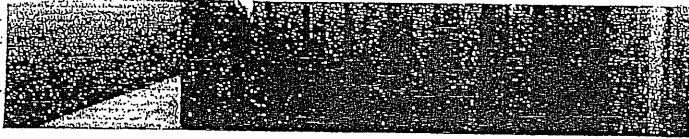


MSCU1550902 Inspected at SSA Terminal Long Beach on April 13, 2007
Mfg. Date 10/2002 Door gaskets in good condition.

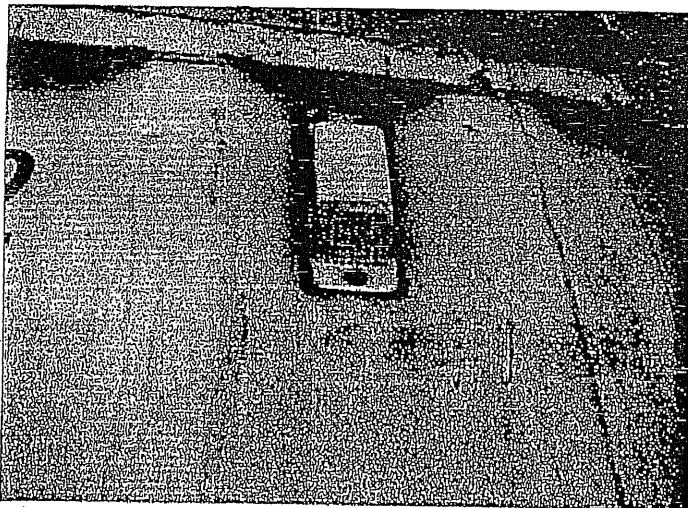


No damage to panels. Container in apprent visible satisfactory conditon.



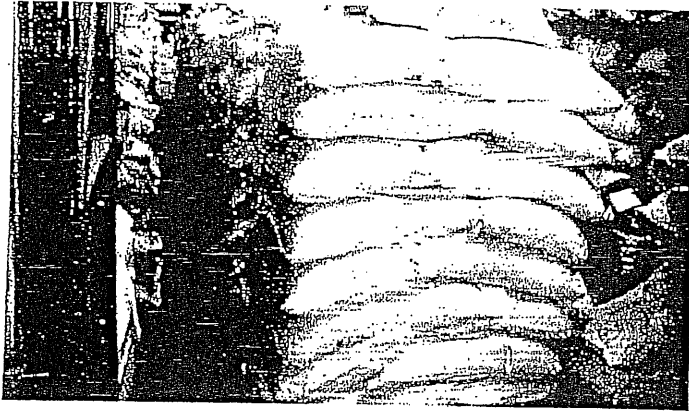


Side vents partially taped over.

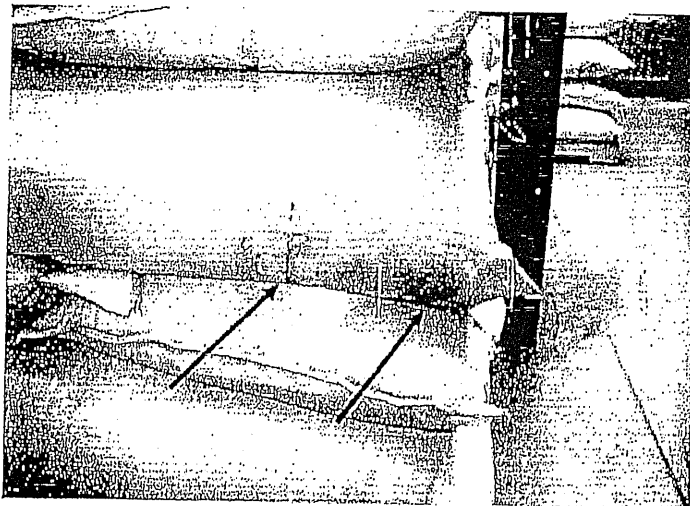


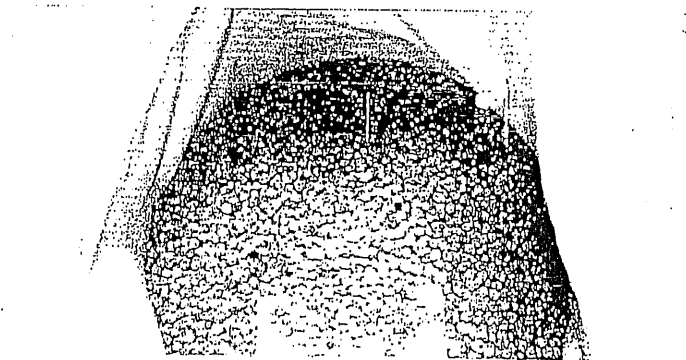
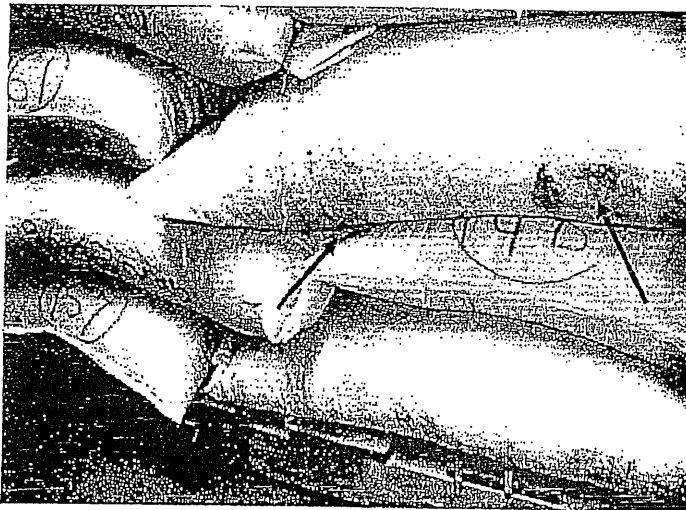
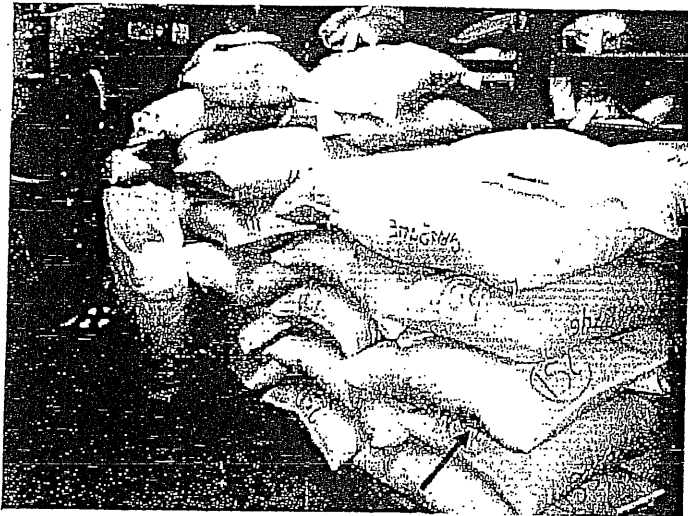
INSPECTION OF SHIPMENT AT ENVIRONMENTAL SEED PRODUCTS
LOMPOC CA ON APRIL 17, 2007





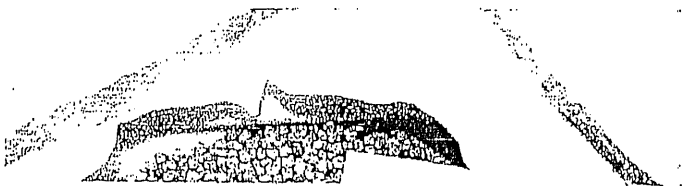
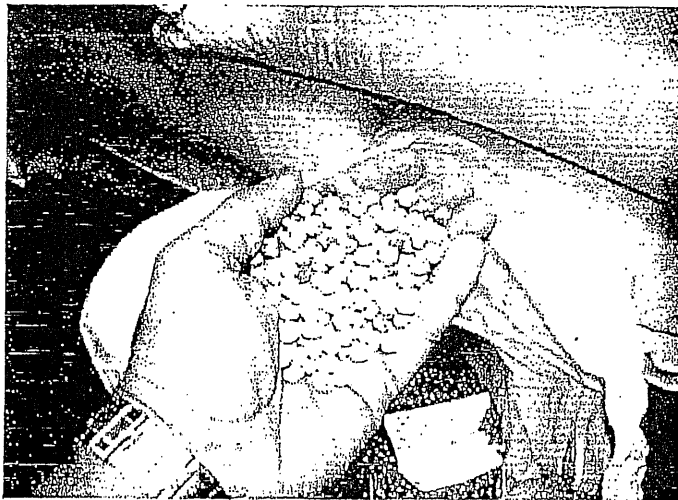
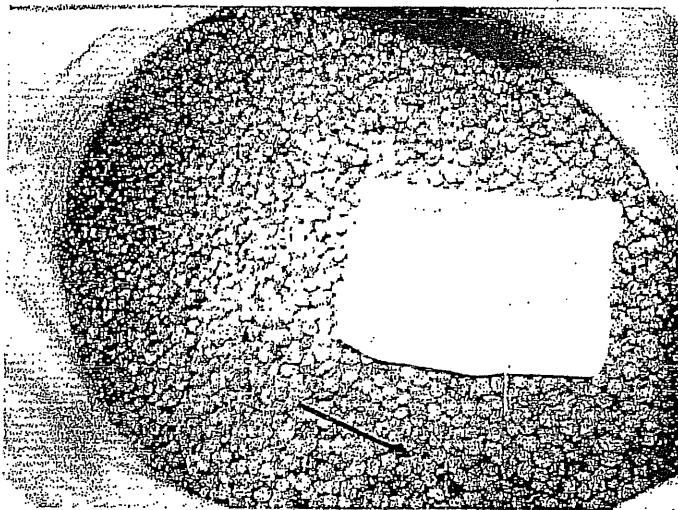
Wet stains on side of bags

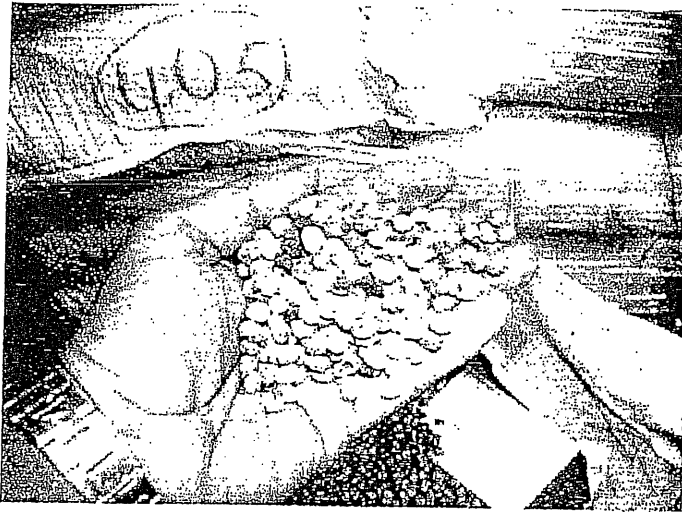
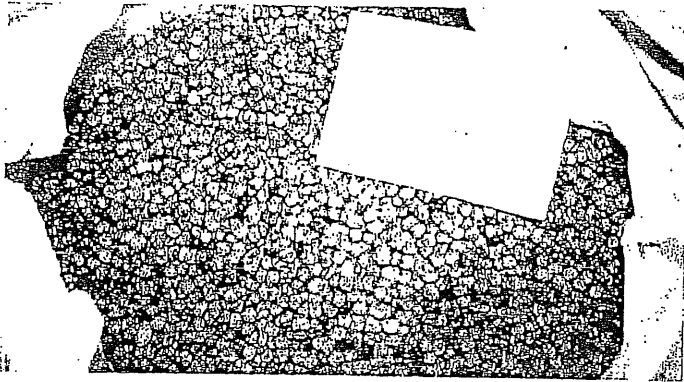


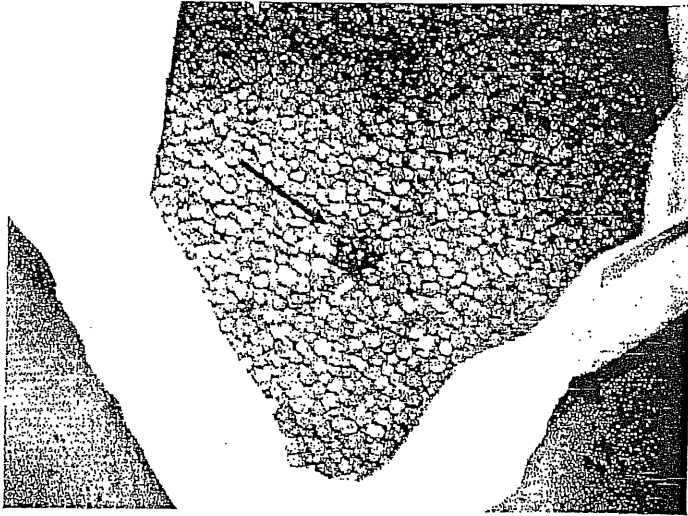




Tropaeolum seeds in wet stained bags partially moldy and shrunk

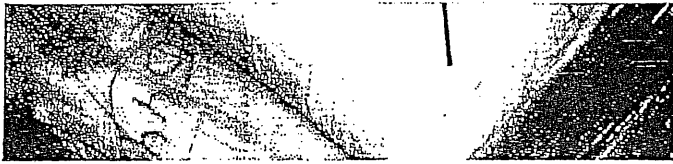




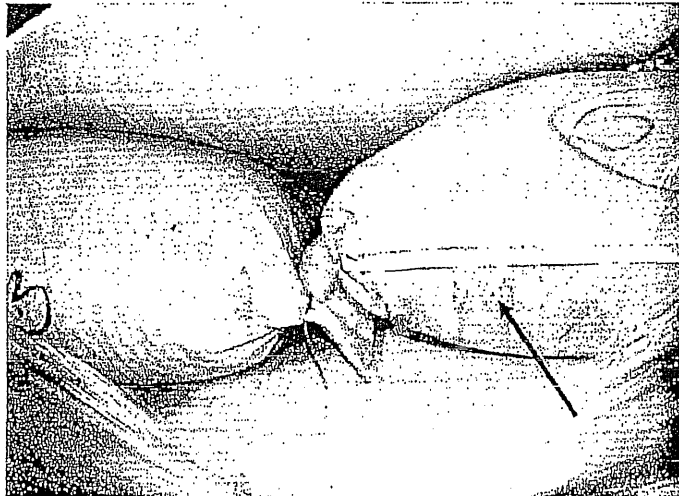
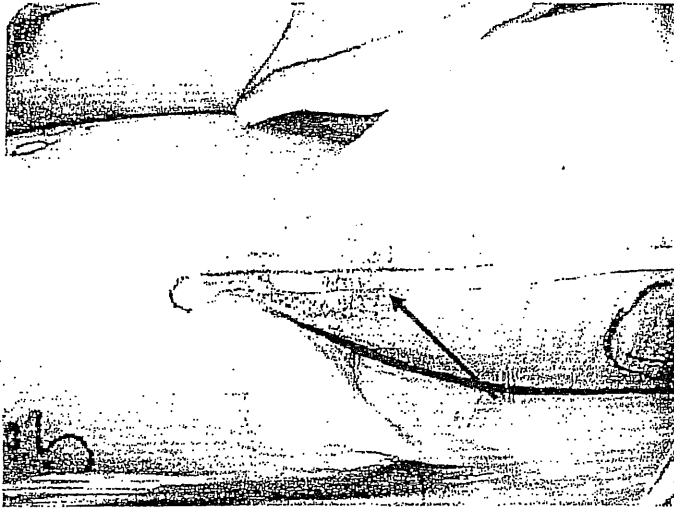


Wet clumps of seeds



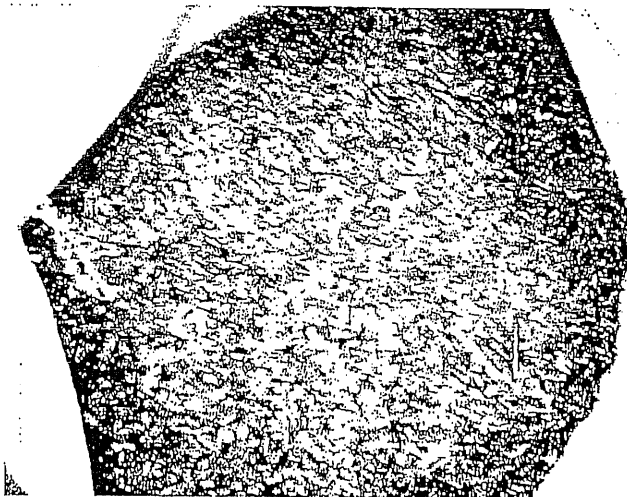


Wet Stains on Bags

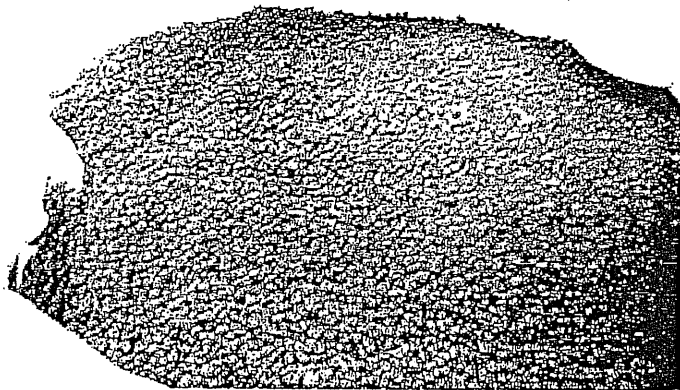




Seeds wet near stains on bags. Moldy

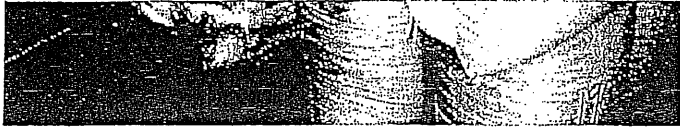


Zinnia Seeds Dry & In Good Condition

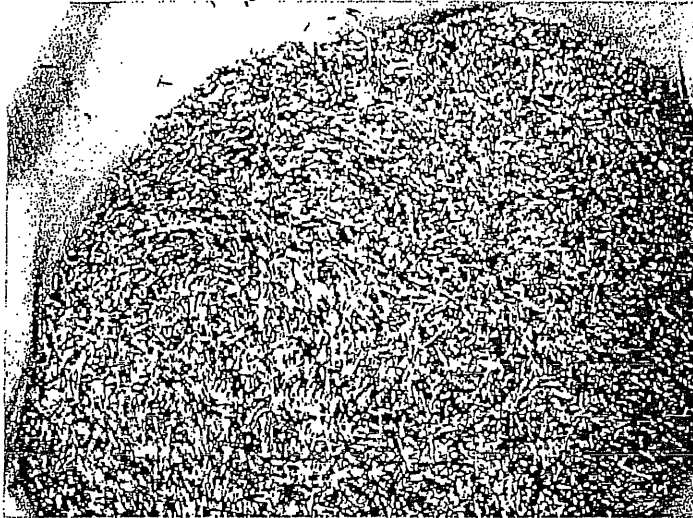


Thunbergia Seeds in good conditon.





We stains on side of bags



Tangetas Seeds in good condition.

EXHIBIT 6

LYONS & FLOOD, L LP
65 W 36th Street, 7th Floor
New York, New York 10018
(212) 594-2400

Attorneys for Defendant
MEDITERRANEAN SHIPPING COMPANY, S.A.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
LIBERTY MUTUAL GROUP INC.
as subrogee of BODGER SEEDS, LTD

08 Civ. 00223 (JSR)

Plaintiff,

- against -

MEDITERRANEAN SHIPPING COMPANY S.A.

Defendant.
-----X

RESPONSE TO PLAINTIFFS' FIRST SET OF REQUESTS FOR PRODUCTION

Defendant MEDITERRANEAN SHIPPING COMPANY S.A. ("MSC"), through its attorneys Lyons & Flood, LLP, hereby responds to Plaintiffs' First Set of Requests For Production ("Requests"), upon information and belief as follows:

MSC has conducted a diligent search and reasonable inquiry in response to the Requests. However, MSC has not completed its investigation of the facts related to this case, has not completed discovery in this action, and has not completed its preparation for any trial that might be held herein. Its responses to these Requests are based upon information currently known to MSC and are given without prejudice to MSC's right to supplement, add to, amend, or modify its responses to these Requests. Moreover, MSC reserves the right to make use of, or introduce at any hearing or at trial, documents or

facts not known to exist at the time of production, including, but not limited to, documents obtained in the course of discovery in this action.

Subject to and without waiving the foregoing Preliminary Statement, MSC makes the following General Objections to the Requests in their entirety, including each of plaintiffs' definitions, instructions, and individual requests contained therein:

GENERAL OBJECTIONS

MSC makes the following General Objections, whether or not separately set forth in response to each and every request propounded by plaintiffs. The assertion of the same, similar, or additional objections or partial responses to plaintiffs' individual requests does not waive any of MSC's General Objections.

1. MSC objects to the Requests to the extent that they seek information which is not relevant to the subject matter of this action in that it is neither admissible in evidence nor reasonably calculated to lead to the discovery of admissible evidence related to a claim or defense in this action.

2. MSC objects to the Requests to the extent that they seek confidential or private business information, including, without limitation, trade secret information, personnel information, and/or competitively sensitive information. MSC will not produce confidential or private business information except pursuant to an appropriate protective order to be entered in this action and any Court ordered modifications thereof.

3. MSC objects to the Requests to the extent they seek information that is: (a) protected by the attorney-client privilege or prepared in anticipation of litigation or for trial, or that is otherwise subject to the attorney work product doctrine; and/or (b) protected by the right to privacy guaranteed by the United States Constitution; (c)

protected by the joint defense privilege, the common interest privilege, or similar privileges; and/or (d) protected by any other applicable privilege, doctrine or immunity.

4. Any such information is defined to be “privileged.” Any inadvertent disclosure of privileged information shall not be deemed to be a waiver by MSC of any applicable privileges or doctrines.

5. MSC objects to the Requests to the extent that they attempt to impose on MSC any obligations or requirements that exceed, enlarge and/or alter those imposed by the Federal Rules of Civil Procedure.

6. MSC objects to the Requests to the extent that they fail to comply with Rule 34 of the Federal Rules of Civil Procedure.

7. MSC objects to the Requests to the extent that they are vague, ambiguous, misleading, uncertain, unintelligible, overly broad, fail to specifically describe the information sought, are not defined, seek information outside the scope of the instant lawsuit, and/or would require MSC to speculate as to the nature and scope of the documents sought.

8. MSC objects to the Requests to the extent that they are unduly burdensome, compound and/or duplicative.

9. MSC objects to the Requests to the extent that they call for discovery which will properly be the subject of discovery for which disclosure presently is both unwarranted and premature.

10. MSC objects to the Requests to the extent that they purport to seek documents that are already in plaintiffs’ possession, documents that are a matter of public record and/or documents that are otherwise equally accessible to plaintiffs.

11. MSC objects to the Requests to the extent that they purport to impose on MSC the burden of ascertaining information that is not in MSC's possession, custody or control, and/or that cannot be found in the course of a reasonable search.

12. MSC objects to the Requests to the extent that they call for organization of documents according to request. MSC will produce documents as they are kept in the ordinary course of business.

13. MSC objects to the Requests to the extent that they contain inappropriate and/or argumentative headings and sub-headings.

14. MSC states these objections without waiving or intending to waive, but on the contrary preserving and intending to preserve: (a) all objections to the competency, relevancy, materiality, privilege, and admissibility as evidence for any purpose of the responses to the Requests or the subject matter thereof, in any subsequent proceeding in, or the trial of, this or any other action; (b) the right to object on any grounds to the use of any response, or the subject matter thereof, in any subsequent proceeding in, or the trial of, this or any other action; (c) the right to object on any grounds at any time to a demand for further response to these or any other discovery procedures involving or related to the subject matter of the Requests directed to MSC; and (d) the right to object on any grounds to any other or future discovery requests.

15. Subject to and without waiving the General Objections and qualifications above, MSC further responds as follows:

RESPONSES TO INDIVIDUAL REQUESTS

REQUEST NO. 1: All communications or notes of communications and all internal records, documents, correspondence, letters, memoranda, e-mails, reports, notes,

drafts, or other written materials concerning the shipment that is the subject matter of his litigation.

RESPONSE: MSC objects to this request on the grounds that it is vague, overly broad, fails to specifically describe the information sought and would require MSC to speculate as to the nature and scope of the documents sought. Subject to and without waiver of the foregoing, MSC produces the following document in addition to the documents produced as part of its Initial Disclosures:

- a. E-mail Correspondence between Stefaan Deconinck of MSC and Adriana Mrowczynska of MSC regarding letter from Badiak & Will LLP.

REQUEST NO. 2: All surveys, photographs, videotapes, diagrams or other materials depicting the shipment that is the subject matter of this litigation.

RESPONSE: See the documents produced as part of MSC's Initial Disclosures.

REQUEST NO. 3: All written materials including but not limited to internal letters, memoranda, e-mails, reports, and/or drafts concerning the handling, packaging, storage and/or transport of the shipment that is the subject matter of this litigation.

RESPONSE: MSC objects to this Request on the grounds that it is duplicative. MSC continues its investigation for materials responsive to this request and reserves the right to supplement this response up to and including the time of trial. Subject to and without waiver of the foregoing, MSC produces the following:

- a. MSC's Bay Plans for the Vessels at issue;

REQUEST NO. 4: All communications or notes of communications and all written materials exchanged by and between the parties concerning the shipment that is the subject matter of this litigation including but no limited to notes, drafts, reports,

letters, correspondence, e-mail messages, documents and/or records.

RESPONSE: MSC objects to this Request on the grounds that it is duplicative. MSC continues its investigation for materials responsive to this request and reserves the right to supplement this response up to and including the time of trial. If we receive such documents, we will remit them in due course.

REQUEST NO. 5: Any and all agreements including drafts entered into by and between the parties concerning the shipment that is the subject of this litigation, along with any notes, memoranda, documents, correspondence, e-mails and any other written materials referencing or pertaining to this agreement.

RESPONSE: MSC objects to this Request on the grounds that it is duplicative. See the documents produced as part of MSC's Initial Disclosures.

REQUEST NO. 6: Any and all communications or notes of communications, correspondence, memoranda, e-mails, reports, documents or other written materials exchanged by and between defendant MEDITERRANEAN SHIPPING COMPANY, S.A. and third parties concerning the shipment that is the subject matter of this litigation.

RESPONSE: MSC objects to this Request on the grounds that it is duplicative. Subject to and without waiver of the foregoing, MSC produces the following:

- a. Email from Dominick Mecky to Capt. Nanik Kirpalani.

REQUEST NO. 7: Defendant MEDITERRANEAN SHIPPING COMPANY, S.A.'s entire file pertaining to plaintiff's claim and the shipment which is the subject matter of this litigation.

RESPONSE: MSC objects to this Request on the grounds that it is duplicative. See the documents produced as part of MSC's Initial Disclosures and note that MSC

continues its investigation for materials responsive to this request and reserves the right to supplement this response up to and including the time of trial. If we receive such documents, we will remit them in due course.

REQUEST NO. 8: Any and all interchange receipts, transit receipts and/or related documents concerning or pertaining to the shipment that is the subject matter of this litigation.

RESPONSE: See the documents produced as part of MSC's Initial Disclosures. Subject to and without waiver of the foregoing, MSC also produces the following:

- a. MSC's Gate Transaction Inquiry.

REQUEST NO. 9: Any and all documents or other written materials, including, but not limited to internal letters, notes, drafts, memoranda, correspondence, e-mails and/or reports concerning the transport of the shipment that is the subject matter of this litigation to and from the terminals of lading and discharge.

RESPONSE: MSC objects to this Request on the grounds that it is duplicative. See the documents produced as part of MSC's Initial Disclosures

REQUEST NO. 10: Any and all delivery receipts concerning the shipment that is the subject matter of this litigation.

RESPONSE: See Response to Request No. 8 above.

REQUEST NO. 11: Any and all copies, including drafts, of all storage plans concerning the shipment that is the subject matter of this litigation.

RESPONSE: See Response to Request No. 3 above.

REQUEST NO. 12: Any and all bills of lading including front and reverse sides, concerning the shipment that is the subject matter of this litigation.

RESPONSE: See MSC's Bill of Lading attached hereto.

REQUEST NO. 13: Any and all internal reports, including drafts and notes, concerning the shipment that is the subject matter of this litigation.

RESPONSE: MSC objects to this Request on the grounds that it is duplicative. See the documents produced as part of MSC's Initial Disclosures and note that MSC continues its investigation for materials responsive to this request and reserves the right to supplement this response up to and including the time of trial. If we receive such documents, we will remit them in due course.

REQUEST NO. 14: Any and all documents, correspondence and/or other written materials, including e-mails, notifying the defendant of any damage and/or claims concerning the shipment that is the subject matter of this litigation.

RESPONSE: MSC objects to this Request on the grounds that it is duplicative. Subject to and without waiver of the foregoing, MSC produces the following documents in addition to documents contained in its Initial Disclosures:

- a. E-mail from MSC to Badiak & Will LLP dated December 11, 2007.
- b. Letter from Badiak & Will LLP to MSC dated November 30, 2007.
- c. Letter from MSC to Badiak & Will LLP dated October 25, 2007.
- d. Letter from Badiak & Will LLP to MSC dated October 18, 2007

MSC continues its investigation for materials responsive to this request and reserves the right to supplement this response up to and including the time of trial. If we receive such documents, we will remit them in due course.

REQUEST NO. 15: Any and all correspondence, documents and/or written materials, including e-mails, exchanged by and between the parties pertaining to the

shipping arrangements concerning the shipment that is the subject matter of this litigation.

RESPONSE: MSC objects to this Request on the grounds that it is duplicative. See the documents produced as part of MSC's Initial Disclosures and note that MSC continues its investigation for materials responsive to this request and reserves the right to supplement this response up to and including the time of trial. If we receive such documents, we will remit them in due course.

REQUEST NO. 16: Any and all documents, correspondence and/or other written materials, including e-mails exchanged by and between the defendant MEDITERRANEAN SHIPPING COMPANY S.A., and third-parties pertaining to the shipping arrangements concerning the shipment that is the subject matter of this litigation.

RESPONSE: MSC objects to this Request on the grounds that it is duplicative. See the documents produced as part of MSC's Initial Disclosures and note that MSC continues its investigation for materials responsive to this request and reserves the right to supplement this response up to and including the time of trial. If we receive such documents, we will remit them in due course.

REQUEST NO. 17: Any and all documents, memoranda, notes, drafts, reports, correspondence, e-mails, and/or other documents pertaining to the loading and discharge of the shipment that is the subject matter of this litigation.

RESPONSE: MSC objects to this Request on the grounds that it is duplicative. See the documents produced as part of MSC's Initial Disclosures and note that MSC continues its investigation for materials responsive to this request and reserves the right

to supplement this response up to and including the time of trial. If we receive such documents, we will remit them in due course.

REQUEST NO. 18: Any and all log books concerning the shipment that is the subject matter of this litigation.

RESPONSE: MSC continues its investigation for materials responsive to this request and reserves the right to supplement this response up to and including the time of trial. If we receive such documents, we will remit them in due course.

REQUEST NO. 19: Any and all agreements, including drafts and/or proposals, entered into by and between the defendant MEDITERRANEAN SHIPPING COMPANY, S.A., and third parties concerning the shipment that is the subject matter of this litigation.

RESPONSE: See the documents produced as part of MSC's Initial Disclosures and note that MSC continues its investigation for materials responsive to this request and reserves the right to supplement this response up to and including the time of trial. If we receive such documents, we will remit them in due course.

REQUEST NO. 20: All Shipper's Letters of Instructions, including front and reverse sides.

RESPONSE: See the documents produced as part of MSC's Initial Disclosures and note that MSC continues its investigation for materials responsive to this request and reserves the right to supplement this response up to and including the time of trial. If we receive such documents, we will remit them in due course.

REQUEST NO. 21: Any and all records relating to the receipt by defendant of the subject cargo.

RESPONSE: MSC objects to this Request on the grounds that it is duplicative.

See the documents produced as part of MSC's Initial Disclosures and in Response to this Request for Production of Documents and note that MSC continues its investigation for materials responsive to this request and reserves the right to supplement this response up to and including the time of trial. If we receive such documents, we will remit them in due course.

REQUEST NO. 22: Any and all documents showing exceptions, if any, concerning the order and condition of the cargo described in the Complaint prior to or upon loading on the vessel.

RESPONSE: See documents produced as part of MSC's Initial Disclosures.

REQUEST NO. 23: Any and all statements made by any party concerning the shipment which is the subject matter of this litigation.

RESPONSE: See documents produced as part of MSC's Initial Disclosures and note that MSC continues its investigation for materials responsive to this request and reserves the right to supplement this response up to and including the time of trial. If we receive such documents, we will remit them in due course.

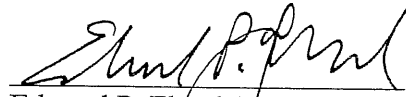
REQUEST NO. 24: Any and all statements made by any person, firm or entity or witness concerning the shipment which is the subject matter of this litigation.

RESPONSE: See documents produced as part of MSC's Initial Disclosures and note that MSC continues its investigation for materials responsive to this request and reserves the right to supplement this response up to and including the time of trial. If we receive such documents, we will remit them in due course.

Dated: July 21, 2008

LYONS & FLOOD, LLP
Attorneys for Defendant
MEDITERRANEAN SHIPPING
COMPANY, S.A.

By:



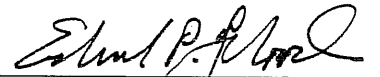
Edward P. Flood (EPF-5797)
65 West 36th Street, 7th Floor
New York, New York 10018
(212) 594-2400

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CERTIFICATE OF SERVICE

Edward P. Flood, an attorney duly admitted to practice before this Honorable Court, affirms on this 21st day of July 2008, I served true copies of the foregoing, by Federal Express, to:

BADIAK & WILL, LLP
Attorney for Plaintiff
106 Third Street
Mineola, New York 11501
Attn: Alfred J. Will, Esq.
Firm Ref: 07-J-011-AW



Edward P. Flood

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From: S DECONINCK CHGVA LEGAL [sdeconinck@mscgva.ch]
Sent: Monday, December 10, 2007 8:53 AM
To: A MROWCZYNSKA USNYC CLAIMS
Cc: Cargo Claims DL
Subject: RE: GVA 2007-5152-561-2/MSC NY REF T-2382/ROYAL ZANZIBAR 56A/MSCUTA 011091/MSC
BEACH

Follow Up Flag: Follow up
Flag Status: Red

Dear Adriana,

During our review of the file relative to the captioned matter, we noticed that our surveyor, to be in good condition, concluded that the shipment was affected by condensation resulting from flowers contained in the different varieties of flower seeds.

The above conclusion is supported by the statement of the consignee who found a majority of water on the walls and on the top tiers.

MSC, as carrier under FCL/FCL terms, cannot be held responsible for condensation damages and must reject this claim in full.

Please inform Badiak & Will accordingly.

Thanks and best regards,

Stefaan Deconinck
Legal Department
MSC Geneva

Ph.: ++41 22 703 85 17

Fax: ++41 22 703 87 10

P Please consider your environmental responsibility before printing this e-mail

-----Original Message-----

From: A MROWCZYNSKA USNYC CLAIMS

Sent: jeudi 6 décembre 2007 15:09

To: S DECONINCK CHGVA LEGAL

Cc: Cargo Claims DL

Subject: GVA 2007-5152-561-2/MSC NY REF T-2382/ROYAL ZANZIBAR 56A/MSCUTA 011091/MSCU 1550902/

Dear Stefaan,

Attached please find a letter from Badiak & Will LLP asking for a settlement proposal. Please

Best Regards,

Adriana Mrowczynska
MSC USA Inc.

As Agents for: Mediterranean Shipping Company S.A. Geneva 420 Fifth Avenue New York, NY 10018

Ph: 212-764-4800 Ext. 42667

Fax: 212-764-1352

amrowczynska@msc.us

VOY NO: L706A

MSC SILVANA

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500782: Non-Haz Activated Carbon

11 13

Edward P. Flood

From: "DOMINICK MECKY" <mgr-tgt@kaributanga.com>
To: "N KIRPALANI USNYC CLAIMS MGR" <NKIRPALANI@MSC.US>; "seatrade tanga, branch mgr, mr dominick mecky" <mgr-tgt@msctzdar.com>
Cc: "S DECONINCK CHGVA LEGAL" <sdeconinck@mscgva.ch>; "S DECARROUX CHGVA LEGAL" <sdecarroux@mscgva.ch>; <eflood@lyons-flood.com>; "M WACLAWEK USNYC CLAIMS ASST MGR" <MWACLAWEK@MSC.US>; "A MROWCZYNSKA USNYC CLAIMS" <amrowczynska@MSC.US>
Sent: Thursday, May 08, 2008 3:05 AM
Subject: Re: GVA 2007-5152-561-2 / T-2382 - MSC Federica B710A - MSC Ilona 0710A - B/L MSCUTA 011091 - MCCU 1550902 648 Bags of Flower Seeds - Loaded Tanga, Tanzania January 26, 2007 for discharge at Long Beach, CA. USA.

Dear Capt. Nanik Kirpalani,

We have made a follow up regarding this matter. Please, note the following:

- Empty containers were released to shipper when containers were clean and all vents were open. Therefore, Cellophane Tape was applied by Shippers themselves.
- Generally when containers are sent to shipper, vents are open. Shippers decide whether to leave them open or close.
- Vents are generally not checked when containers arrive at terminal for shipping.

This shipment was an FCL/FCL and cargo was stuffed in Arusha by shipper under customs supervision.

Thank you and best regards,
 Dominick Mecky,

----- Original Message -----

From: N KIRPALANI USNYC CLAIMS MGR
To: seatrade tanga, branch mgr, mr dominick mecky
Cc: S DECONINCK CHGVA LEGAL ; S DECARROUX CHGVA LEGAL ; eflood@lyons-flood.com ; M WACLAWEK USNYC CLAIMS ASST MGR ; A MROWCZYNSKA USNYC CLAIMS
Sent: Wednesday, April 30, 2008 11:25 PM
Subject: GVA 2007-5152-561-2 / T-2382 - MSC Federica B710A - MSC Ilona 0710A - B/L MSCUTA 011091 - MCCU 1550902 648 Bags of Flower Seeds - Loaded Tanga, Tanzania January 26, 2007 for discharge at Long Beach, CA. USA.

Dear Mr. Dominick Mecky,

Good morning.

The cargo in the captioned container arrived at destination with considerable 'Mould' and 'Condensation'.

Evidently the 'Vents' on the container were 'Mostly Taped with Cellophane Tape' Please see attached photographs.



BOYD HAREN
MEDITERRANEAN SHIPPING COMPANY

Terminal A

Equipment #:



Advanced Equipment Inquiry

Booking #:



Advanced Booking Inquiry

Search Criteria

[Home](#)[Logout](#)[My Profile](#)[Contact](#)[Help](#)

Gate Transaction Inquiry

Date	Trans. Nbr.	Task	Trans. Status	Container	Chassis	Service Order	Trucker Code	Tractor Lic.
04/10/2007	158	FULLOUT		MSCU1550902	MSCZ2080	1325904	MSI	9D30460C,

Search Results

Export Transactions
Import Transactions
Gate Transactions
Gate Transaction Inquiry
Equipment Reports
Vessel Schedule Truckers

Transaction			
Transaction Number	158	Transaction Status	EIR
Task	FULLOUT	Direction	O
Category	I	Line	MSC
Status	F	Online/Batch	O
Override Gate Edits		Carrier	MSI
Vehicle	9D30460CA	Visit	04/10/07 01:21:13

Container Details

Container	MSCU1550902	Container Owner	MSC
Service Order	1325904	Service Order Line	MSC
Vessel	9225641	Voyage	0710A
Container ISU Code		Container Damage	
Container Position	F223	Overdimension	
Container Safe		Seals	
Weight	20.3	Hazardous	
Commodity Code		Vent Observed/UOM	
Special Stow		Temp. Reading	
Temp. Setting			

Dray Status		Tax Code	
FTZ Doc		Prechecked	04/10/2007 01:21
Decked		Outgated	10-APR-07
Created	04/10/2007 01:21	Changed	04/10/2007 02:01

Chassis & Accessories			
Chassis	MSCZ208043	Chassis Owner	MSC
Chassis ISO Code		Chassis Damage	
Chassis Position		Fill Direction	W
Genset		Cooling Unit	

Weight Details			
Scale Weight		Tractor Weight	
Chassis Weight	2.9	Genset Weight	
Cooling Unit Weight		Net Weight	

ORIGINAL

The Center has no responsibility for the content of any article published in this journal. The Center is not responsible for any damage or loss of property, or for any injury or illness, or for any death, that may result from the use of any information contained in this journal. The Center is not responsible for any damage or loss of property, or for any injury or illness, or for any death, that may result from the use of any information contained in this journal.

the first three (2) and therefore the same are collected in the same class of ANIMALS. As regards the value of each animal, I regret that I have not sufficient data to enable me to give a more accurate estimate of their value for man. I have, however, been able to ascertain that the value of the animals of the same species varies with the nature of the soil, the climate, and the habits of the animals. I have also been able to ascertain that the value of the animals of the same species varies with the nature of the soil, the climate, and the habits of the animals. I have also been able to ascertain that the value of the animals of the same species varies with the nature of the soil, the climate, and the habits of the animals.

[illegible][illegible]

LIABILITY OF AGENTS AND SUBCONTRACTORS: It is hereby expressly agreed that the present report of the findings and conclusions of the study, caused by the completion of the contract of the government agencies in the report.

[illegible]

The first step in the analysis was to determine whether there were differences between the two groups in terms of their demographic characteristics. The results showed that there were no significant differences between the two groups in terms of age, gender, or education level. However, there were significant differences in terms of income level and employment status.

In addition, the researchers conducted a series of regression analyses to examine the relationship between the independent variables and the dependent variable. The results showed that income level and employment status were both significant predictors of the dependent variable. Specifically, higher income levels and full-time employment were associated with higher values of the dependent variable.

Overall, the findings suggest that while there are no differences in demographic characteristics between the two groups, there are significant differences in terms of economic factors. These findings have important implications for future research and policy development.

[illegible][illegible][illegible][illegible]

U.S. courts, but also in respect of possible earnings subsidies. (3) The *Corbin* estate here, a far larger one (estate in respect of corporate assets) than the *Corbin* estate in respect of personal assets, is in respect of General Atomics and its large contributions, together with the costs of maintaining the yards in storage and many other costs, including the various contributions to the *Corbin* estate.

[illegible][illegible]

MUTUALHOLDERS WARRANTS: The Corporation hereby expressly warrants that the above described fully paid up shares which

EQUIPMENT DEMANDS: Modern boats are faster and more powerful than ever before. They are also more expensive. The average cost of a new boat is now over \$10,000. This means that the equipment demands are much higher than in the past.

[illegible]

A MROWCZYNSKA USNYC CLAIMS

From: A MROWCZYNSKA USNYC CLAIMS
Sent: Tuesday, December 11, 2007 12:32 PM
To: 'ADMIRALAW@AOL.COM'; 'akatz@badiakwill.com'
Cc: Cargo Claims DL
Subject: RE: MSC Claim # T-2382/ B/L MSCUTA011430; MSCUTA011091; Our Ref: 07-J-011-AW

Dear Mr. Will and Mr. Katz,

Reference subject matter, our Principals has reviewed the claim documents and has following comments:

"During our review of the file relative to the captioned matter, we noticed that our surveyor, having found the container to be in good condition, concluded that the shipment was affected by condensation resulting from inherent moisture contained in the different varieties of flower seeds.

The above conclusion is supported by the statement of the consignee who found a majority of wet bags along the container walls and on the top tiers.

MSC, as carrier under FCL/FCL terms, cannot be held responsible for condensation damages and hence has no other choice but to reject this claim in full."

In view of the above MSC must reject all liability on this matter.

Best Regards,

Adriana Mrowczynska
MSC USA Inc.
As Agents for: Mediterranean Shipping Company S.A. Geneva
420 Fifth Avenue
New York, NY 10018
Cargo Claims Department
Ph: 212-764-4800 Ext. 42667
Fax: 212-764-1352
amrowczynska@msc.us

From: A MROWCZYNSKA USNYC CLAIMS
Sent: Monday, December 03, 2007 12:07 PM
To: 'Alan Katz'
Cc: Cargo Claims DL
Subject: RE: MSC Claim # T-2382/ B/L MSCUTA011430; MSCUTA011091; Our Ref: 07-J-011-AW

Dear Mr.

Best Regards,

Adriana Mrowczynska
MSC USA Inc.
As Agents for: Mediterranean Shipping Company S.A. Geneva
420 Fifth Avenue

BADIAK & WILL, LLP*Attorneys and Proctors in Admiralty*

TELEPHONE: (516) 877-2225
TELEFAX: (516) 877-2230/2240
E-MAIL: ADMIRALLAW@ADL.COM

106 THIRD STREET
MINEOLA, NY 11501-4404

FLORIDA OFFICE:
BADIAK, WILL & KALLEN
17071 WEST DIXIE HIGHWAY
NORTH MIAMI BEACH, FL 33160

November 30, 2007

Mediterranean Shipping Company (USA) Inc.
420 Fifth Avenue, 8th Floor
New York, New York 10018-2702

RE: "MSC ILONA" v. 0701A
Your Ref.: T2382
Our Ref.: 07-J-011-AW

Gentlemen:

Enclosed please find a copy of our letter dated October 18, 2007, your reference T2382.

At this time, we would appreciate your making this settlement proposal with respect to this loss. Thank you for your prompt attention to this matter.

Very truly yours,

BADIAK & WILL, LLP


ALFRED J. WILL

AJW/kl



MEDITERRANEAN SHIPPING COMPANY (USA) INC.

420 Fifth Avenue, New York, NY 10018-2702
Phone (212) 764 - 4800 Fax (212) 764 - 1352

Mediterranean Shipping Company S.A.
40, Avenue Eugene Pittard
1206 Geneva, Switzerland
Attn.: Legal and Claims Dept. -

October 25, 2007

Ref: GVA 2007-5152-561-2
Vessel: ROYAL ZANZIBAR 56A
BL: MSCUTA011430
Ctr.: MSCU 1550902
Cargo description: Flower Seeds
Pol: Tanga
Pod: Long Beach
Date of Discharge: 04-05-07
Claim Amount: USD \$2,500.00

MSC File Ref: T-2382

Good day,
Enclosed please find documentation for subject claim. By copy of this letter, we are acknowledging receipt of the claim.

Kind regards
Cargo Claims Dept.
Mediterranean Shipping Company (USA) INC
As Agents for: Mediterranean Shipping Company S.A. Geneva
Phone: 212-764-4800
Fax: 212-764-1352
Email: cargoclaims@msc.us

C.c. Claimant : Badiak & Will, LLP
106 Third Street
Mineola, NY 11501-4404

BADIAK & WILL, LLP*Attorneys and Proctors in Admiralty*

ROMAN BADIAK
ALFRED J. WILL
JAMES P. KRAUZLIS
LISA ANN SCOGNAMILLO

106 THIRD STREET
MINEOLA, NY 11501-4404

TELEPHONE: (516) 877-2225
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E-MAIL: ADMIRALAW@ADL.COM

FLORIDA OFFICE:
BADIAK, WILL & KALLEN
17071 WEST DIXIE HIGHWAY
NORTH MIAMI BEACH, FL 33160
JOHN D. KALLEN

Cargo Claims Department
Mediterranean Shipping Company (USA) Inc.
420 Fifth Avenue, 8th Floor
New York, New York 10018-2702

October 18, 2007

Our Ref.: 07-J-011-AW

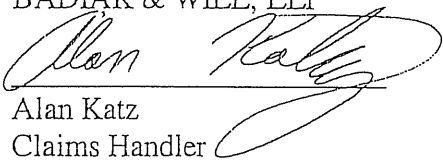
Dear Sir or Madam:

We have been retained by Liberty International Underwriters to effect recovery of the following claim and are enclosing the documents listed below. A shipment of flower seeds was exposed to freshwater during carriage. Please note that the claim amount includes the assured's \$2,500.00 deductible. Your prompt investigation and payment of this claim would be appreciated.

B/L #'s: MSCUTA011430, 1/26/07; MSCUTA011091
VESSELS: ROYAL ZANZIBAR; MSC ILONA
ORIGIN: Tanga, Tanzania DISCHARGE: Long Beach, California
SHIPPER: Maua Arusha, Ltd. CONSIGNEE: Enveromentar Seeds Producers
SHIPMENT: Flower Seeds

Damage and Loss: = \$69,825.75

Very truly yours,
BADIAK & WILL, LLP


Alan Katz
Claims Handler

Encl.
Subrogation Receipt
Bodger Seeds Claim Statement
Original Bill of Lading
Arrival Notice
Product Invoice
Packing List
U.S. Customs Entry Form
Certificate of Origin
Freshwater Contamination Analysis by A.J. Edmond Company
Vericlam Marine Cargo Survey Report

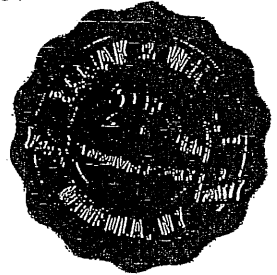


EXHIBIT 7

PORTIONS OF THIS LETTER HAVE BEEN REDACTED AS THEY MAY, ARGUABLY, PERTAIN TO SETTLEMENT DISCUSSIONS.

Attorneys and Proctors in Admiralty

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106 THIRD STREET
MINEOLA, NY 11501-4404

FLORIDA OFFICE:
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NORTH MIAMI BEACH, FL 33160

July 21, 2008

VIA TELEFAX ONLY 212-594-4589 - URGENT

Lyons & Flood, LLP
65 W. 36th Street, 7th Floor
New York, New York 10018

Attn: Ed Flood, Esq.

RE: Liberty Mutual Group Inc., as subrogee of Bodger Seeds, Ltd.
v. Mediterranean Shipping Company USA
Index No.: 08 Civ. 00223 (JSR)
Your Ref.: Please Advise
Our Ref.: 07-J-001-AW/LS

Dear Mr. Flood:

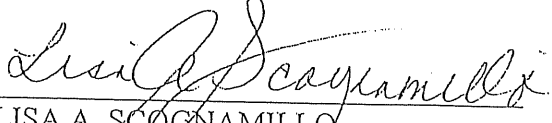
We are in receipt of your letter dated July 18, 2008.

Lyons & Flood, LLP
Attn: Ed Flood, Esq.
July 21, 2008
Page 2

We note that we still have not been provided with ventilation records pertaining to this shipment, or the documents requested in Plaintiff's First Request for Production of Documents dated April 21, 2008. Nor have we received a response to our letter dated July 15, 2008 requesting outstanding discovery and the scheduling of depositions. We would like to depose Mr. Mecky and perhaps Captain Jolly. We reserve the right to take additional depositions after receipt of all outstanding discovery.

Due to the impending deadlines under the Civil Case Management Plan, we intend to seek the Court's intervention no later than tomorrow, July 22, 2008, mid-day.

BADIAK & WILL, LLP


LISA A. SCOGNAMILLO
lscognamillo@badiakwill.com

LAS/lmw

FOR: BADIAK WILL AND RUDDY

12123766778

SEND

DATE	START	RECEIVER	TX TIME	PAGES	TYPE	NOTE	M#	DP
JUL-21	04:00 PM	12125944589	27"	2	FAX TX	OK	488	

TOTAL : 27S PAGES: 2

BADIAK & WILL, LLP*Attorneys and Proctors in Admiralty*

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July 21, 2008

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Lyons & Flood, LLP
 65 W. 36th Street, 7th Floor
 New York, New York 10018

Attn: Ed Flood, Esq.

RE: Liberty Mutual Group Inc., as subrogee of Bodger Seeds, Ltd.
 v. Mediterranean Shipping Company USA
 Index No.: 08 Civ. 00223 (JSR)
 Your Ref.: Please Advise
 Our Ref.: 07-J-001-AW/LS

Index No.: 08 Cv 00223 (JSR)

AFFIDAVIT OF SERVICE

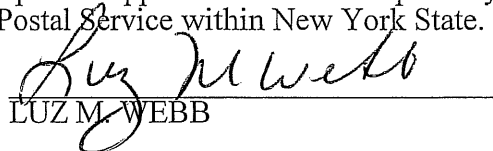
STATE OF NEW YORK)
)SS.:
COUNTY OF NASSAU)

I, Luz M. Webb, being duly sworn, deposes and says:

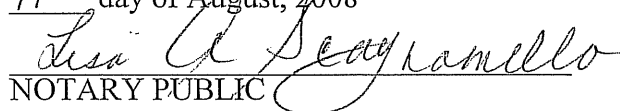
I am not a party to the within action, am over 18 years of age and reside c/o Badiak & Will, LLP, 106 3rd Street, Mineola, New York 11501-4404. On August 11, 2008 I served the within AFFIDAVIT IN SUPPORT on:

LYONS & FLOOD, LLP
Attorneys for Defendant
Mediterranean Shipping Company, S.A.
65 W. 36th Street, 7th Floor
New York, New York 10018
(212) 594-2400

by depositing a true copy thereof enclosed in a post-paid wrapper in an official depository under the exclusive care and custody of the United States Postal Service within New York State.


LUZ M. WEBB

Sworn to before me this
11th day of August, 2008


NOTARY PUBLIC

LISA A. SCOGNAMILLO
Notary Public, State of New York
No. 5011463
Qualified in Nassau County
Commission Expires Apr 19, 2011